

## CHAPTER 8 PURCHASING

[Prior to 4/20/88, Regents, Board of[720]]

### **681—8.1(262) Procurement policy.**

**8.1(1)** The best interests of the state of Iowa and of the regent institutions are served through implementation of a full and free competitive purchasing system fostered by the use of open specifications, competitive bids or quotations, and awards to the lowest responsible bidder. To further a competitive and economical system, the following operating rules are hereby adopted.

*a.* Preference shall be given to Iowa products and suppliers. This preference shall exist when Iowa products can be obtained at equal or less cost and are of equal quality to those products obtainable from out-of-state suppliers. The purchasing officials use their professional judgment in making such determinations.

*b.* Each purchasing officer at each institution maintains a master list of prospective suppliers for each established category and utilizes this list to request, when practical and feasible, three or more quotations or bids for each item to be purchased.

*c.* Any person, agency, or firm wishing to supply materials in a category may request, in writing, that their name be added to the master list. The name is added to the list if in the professional judgment of the purchasing officer the addition would aid in fostering a competitive situation. The purchasing officer may require the requesting party to furnish information relative to qualification to supply the items indicated and relative to financial responsibility.

*d.* Once a supplier is accepted on the master list, the name is not removed from the list except upon the supplier's request, or for good and sufficient reasons, including, but not limited to, the following which may be construed as evidence the supplier is not a responsible bidder:

- (1) Delivery of commodities that do not comply with specifications.
- (2) Failure to deliver within the specified time.
- (3) Refusal to deliver after making a quotation and after receiving an order.
- (4) Repeated withdrawal of quotations prior to the placing of an order.
- (5) Failure to have qualified service available in the area to set up, check out, instruct personnel in use or parts to service equipment, if a part of the agreement or warranty, written or implied.
- (6) Bankruptcy or other evidence of insolvency, or any other fact which might cause substantial doubt about the supplier's ability to continue as a responsible source and to fulfill obligations.
- (7) Failure to comply with the regents' equal employment opportunity policy. Removal shall be on recommendation of the regents' compliance officer.
- (8) Repeated failure to respond to requests for prices.
- (9) No longer in business.

*e.* Whenever possible and practical, specifications drawn by regent institutions are written in general terms so as to foster competition between bidders. If brand names are used to indicate quality desired, the specifications shall contain an "or equal" or "or acceptable alternate" clause. Approval of the "or equal" or "or acceptable alternate" status shall be left to the judgment of the purchasing officials.

*f.* In some instances scientific, mechanical and technical equipment or supplies may be required which are obtainable from a single source only, and further, that in some emergency situations the taking of competitive bids or quotations is not feasible or possible and in such situations, the requirements to do so may be waived. Recognition is also given to standardization and compatibility requirements which should be maintained for purposes of economies in replacement and maintenance.

g. The purchasing officers may establish a procedure, based on economy-of-scale, to handle local small orders. The procedure used as to dollar amount allowable, firms to be utilized, and definition of local area is determined by the purchasing officer at each institution.

h. The name of the successful bidder and all other bidders and the amounts bid shall be supplied to any person upon oral or written request.

i. Nothing contained in these rules shall be construed to mean that the lowest priced goods or inferior or substandard goods must be purchased. The regents institutions purchase the best quality consistent with economy and when possible test and evaluate all supplies, materials, and equipment purchased.

**8.1(2) Targeted small business—purchasing.** All laws and rules pertaining to solicitations, bid evaluations, contract awards, and other procurement matters apply to targeted small businesses.

This rule is intended to implement Iowa Code sections 73.15 to 73.21.

#### **681—8.2(262) Special considerations.**

**8.2(1)** All purchases of equipment, furnishings and supplies for which an exclusive franchise is granted such as laundry equipment, vending machines and coin-operated equipment are subject to the receipt of bids or quotations.

**8.2(2)** Equipment, furnishings, and supplies are purchased by the chief business officer of each institution acting through the institutional purchasing agent, on the basis of quotations when practical and feasible.

**8.2(3)** The chief executive officer of each institution is delegated authority by the board of regents to approve agreements and contracts for all goods and services purchased by the institution except for capital improvements, fire protection, legal services, projects, and engineers. The excepted items require approval of the board. The chief executive officer may further delegate this authority to others.

**8.2(4)** Interest on claims. If a claim for services, supplies, materials, or a contract which is payable from the institution's general fund remains unpaid after 60 days following receipt of the claim or the satisfactory delivery, furnishing, or performance of the services, supplies, materials, or contract, whichever is later, interest shall be paid at the rate of 1 percent per month on the unpaid amount of the claim. This subrule does not apply to claims against the state under Iowa Code chapters 25, 573, and 669 or the claims paid by federal funds.

**8.2(5)** South Africa divestiture. Rescinded IAB 6/22/94, effective 5/27/94.

This rule is intended to implement Iowa Code section 262.9(7) and Iowa Code chapter 12A.

**681—8.3(262) Purchase of equipment funded by academic revenue bond proceeds.** Rescinded IAB 5/24/06, effective 6/28/06.

#### **681—8.4(262) Insurance purchases.**

**8.4(1)** Insurance is purchased from the company offering the lowest net cost. Consideration is given to rates, dividend experience, and financial responsibility. Any changes in present insurers made in compliance with this provision are, where practical, made upon expiration of present insurance contracts.

**8.4(2)** Insurance coverages, authorized by the regents, are purchased upon authorization of the chief business officer of each institution on the basis of the low competitive bid or quotation and in accordance with principles approved by the board.

**8.4(3)** Builder's risk insurance may be required of contractors, and certification of such coverage provided in each instance when required in the notice to bidders.

**681—8.5(262) Purchase of coal.** Rescinded IAB 5/24/06, effective 6/28/06.

**681—8.6(262) Capital procedures.**

**8.6(1)** Estimated cost exceeding \$25,000. Rescinded IAB 5/24/06, effective 6/28/06.

**8.6(2) Bid security.**

*a.* Bids shall be accompanied by and secured only by a cash deposit, cashier's check, certified check, or a bid bond in an amount of at least 5 percent of the bids. Bids accompanied and secured by any other form of bid security shall automatically be disqualified.

*b.* Certified checks and cashiers checks shall be made payable to the executive director, state board of regents.

*c.* Bid bonds must be either in the form which is prescribed by the board of regents or in a form approved by the American Institute of Architects. Bid bonds must be executed solely by corporations authorized to contract as surety in Iowa.

*d.* Bid security shall be agreed upon as the measure of liquidated damages which owner will sustain by failure, neglect, or refusal of bidder to deliver a signed contract stipulating performance of the work in unqualified compliance with contract documents within ten days after notification of award of contract is given.

*e.* Bid security when submitted in the form of a cash deposit, a cashier's check, or a certified check by any bidder except the three lowest bidders will be returned within 48 hours after the bid opening.

*f.* Bid security when retained will, if a cash deposit, a cashier's check, or a certified check, be returned within 48 hours after the contract and performance and payment bond of the successful bidder have been executed by the board of regents. If the award process involves more than the bid holding time established in the contract documents, those bidders whose securities are retained shall have the right to negotiate with the board of regents on the matter.

**8.6(3)** Equal employment opportunity bidding requirement. All construction specifications shall include in the "instructions to bidders" the following: "Bidders shall file with each bid a completed board of regents equal employment opportunity data reporting form as included in the specifications or certify on the certificate of reporting that an equal employment opportunity data reporting form has been filed with one of the institutions governed by the board of regents in the past 12 months."

**8.6(4)** The state board of regents shall give a bidder the opportunity for a hearing before the board when bid security is recommended to be retained, under the requirements of 8.6(2) "*d.*" Iowa Administrative Code. Final decision in such matters shall be rendered by the board following the hearing.

**8.6(5)** Targeted small business—construction contracts. All laws and rules pertaining to solicitations, bid evaluations, contract awards, and other procurement matters apply to targeted small businesses.

This rule is intended to implement Iowa Code sections 73.15 to 73.21.

**681—8.7(262) Insurance deductions.**

**8.7(1) General provisions.** The state of Iowa may extend to eligible insurance companies the right to receive insurance premiums from state employees through payroll deduction upon presentation of insurance deduction authorization forms signed by state employees.

**8.7(2) Qualifications.** To qualify to receive insurance deductions, an insurance company must have and maintain 500 or more state officers or employees participating on a statewide basis. Insurance companies cannot count employees who currently have payroll deductions that have been authorized by existing sections of the Iowa Code, by collective bargaining contracts, or by the governing authority.

An insurance company seeking to be qualified shall supply responsible officials in charge of each affected payroll system with a certified list of all state employees for whom insurance deductions are sought. Such list shall contain, according to affected payroll systems, the names in alphabetical order and social security number of state employees for whom insurance deductions are being requested, and the name of the type of insurance being requested.

**8.7(3) *Payroll system.*** A payroll system for the purpose of this chapter is any one of the following.

1. State of Iowa centralized (including the Iowa state fair board)
2. Department of transportation
3. Iowa State University of science and technology
4. State University of Iowa
5. University of Northern Iowa
6. Iowa Braille and Sight Saving School
7. Iowa School for the Deaf

**8.7(4) *Forms.*** The administration of insurance deductions for qualified insurance companies must be done on authorization forms approved by the responsible official in charge of each payroll system.

**8.7(5) *Noneligible types of insurance.*** Deductions from salaries and wages will not be authorized by any type of insurance which is being provided for by the state, as follows: health and dental; term life; and long-term sickness or disability.

**8.7(6) *Deduction limits and frequency.*** Authorized deductions must be a minimum of \$1 per deduction. The frequency of the deductions shall be compatible with the payroll system. All payroll deductions shall be made in equal amounts on a monthly basis, or be made on a basis compatible with the payroll system.

**8.7(7) *Distribution of literature.*** The state of Iowa will not distribute literature for insurance deductions with payroll materials.

**8.7(8) *Number of contributions.*** Each payroll system shall provide for each employee to make insurance deductions to any combination of four insurance companies.

**8.7(9) *Cash contributions.*** No cash contributions will be accepted or administered through the payroll process or system.

**8.7(10) *Terminations.*** An employee wishing to terminate the deduction shall be required to give 30 days' notice in writing to the appointing authority of the department in which the employee works or, in the case of regents institutions, to the administrator of the payroll system through which the employee is paid.

**8.7(11) *Remittance.*** The administrator of the payroll system shall mail the monthly payment to each insurance company within 20 working days after the last pay date of each calendar month. Support documentation shall be limited to a listing of employees and amount deducted.

**8.7(12) *Service charges.*** Each payroll system may assess a service charge to eligible insurance companies. Service charges may not exceed the total cost of administering the payroll deduction.

**8.7(13) *Solicitation prohibited.*** Agency rules prohibiting solicitation on state property must be followed by sales persons or agents for eligible insurance companies.

**8.7(14) *Annual review of participating employees.*** During September of each year, each participating insurance company shall supply responsible officials in charge of each affected payroll system with a certified list of all state employees who have an insurance deduction. The list shall contain the same information as required in subrule 8.7(2) and will be used by the state to determine if the insurance company has 500 employees participating as required in the rules.

If the minimum qualification is not being maintained, written notification will be provided to the insurance company, giving the insurance company 90 days to meet the minimum qualification. If, at the end of the 90-day period, the minimum qualification has not been attained, the insurance deduction for all participating employees in that company will be terminated.

**8.7(15) *State held harmless.*** Insurance companies shall indemnify and save the state harmless against any and all claims, demands, suits, or other forms of liability which may arise out of any action taken or not taken by the state for the purpose of complying with the provisions of this chapter.

This rule is intended to implement Iowa Code section 70A.17.

**681—8.8(262) Selection of financial advisors.****8.8(1)** *Selection of employees and agents utilized in the issuance of bonds or notes (general).*

- a. Competitive selection procedures shall be used and supervised by the executive director.
- b. The board may waive the requirements for a competitive selection procedure upon adoption of a resolution stating why the waiver is in the public interest.
- c. Results of a competitive selection process shall be referred to the board for action if the aggregate annual compensation is expected to exceed \$25,000.
- d. The executive director may act for the board on competitive selections where the aggregate annual compensation is not expected to exceed \$25,000. A request for board ratification of the executive director's action shall be docketed at the next regularly scheduled board meeting.
- e. Agreements with firms selected as financial advisor, bond counsel or for other functions necessary for the issuance of bonds or notes shall provide for annual renewals during a period not to exceed five years.

**8.8(2)** *Criteria for selection of financial advisor.*

- a. Familiarity with:
  - (1) Iowa laws, the governing statutes, and court decisions relating to regent bonding authority.
  - (2) Federal law and tax laws applicable or potentially applicable to financings by the state board of regents.
  - (3) The state of Iowa, the board, the universities, and outstanding regent bond issues.
  - (4) The "Iowa market" and retail bond brokers within the state of Iowa.
- b. Experience with:
  - (1) State and municipal financings in Iowa.
  - (2) University financings and public competitive bidding.
- c. Cost of service as identified in fees and any separate out-of-pocket expenses.
- d. Demonstrated relationship of cooperation and trust with bond rating agencies.
- e. Knowledge of regional and national bond underwriters and any syndicates that traditionally bid on regent bonds and other critical financing participants.
- f. Professional qualifications and experience of principal employees who will work with regents.
- g. Demonstrated capability to quantitatively evaluate financial variables and their impact on proposed financings.
- h. Familiarity and experience with innovative borrowing mechanisms which could offer increased financial advantage or flexibility.
- i. Ability to undertake the assignment immediately and perform in a satisfactory manner to provide services identified under "Scope of Services" in the Request for Proposals.
- j. Experience and demonstrated success as indicated in a listing of current major clients.
- k. Independence from municipal bond underwriting, trading, or other activities or events which could result in a conflict of interest (this is an absolute requirement for any firm selected as the regents' financial advisor).
- l. Reputation for integrity and compliance with law.
- m. Commitment to fair and equitable employment practices.

**8.8(3)** *Criteria for selection of bond counsel.*

- a. Familiarity with:
  - (1) Iowa laws, the governing statutes and court decisions relating to existing regent bond financing authority, and familiarity with outstanding regent bond issues.
  - (2) Federal law and tax laws applicable or potentially applicable to financings by the state board of regents.
  - (3) Financial advisors, underwriters, and bond rating agencies.
- b. Experience with state and municipal financings in Iowa and expertise with tax aspects of state and municipal financings.

- c. Experience of attorneys that would be assigned to board of regents with university tax exempt financings.
  - d. Cost of service as identified in fees and any separate out-of-pocket expenses.
  - e. Professional qualifications and experience of principal employees who will work with regents.
  - f. Demonstrated relationship of cooperation and trust with bond rating agencies, underwriters, and other critical financing participants.
  - g. Familiarity and experience with master leases, variable rate demand bonds and other innovative borrowing mechanisms which could offer the board advantage or flexibility.
  - h. Demonstrated ability to provide written opinions on bonding matters recognized and accepted by underwriters, brokers and investors in the national market.
  - i. Ability to undertake the assignment immediately and perform in a satisfactory manner to provide services identified under "Scope of Services" in the Request for Proposals.
  - j. Experience and demonstrated success as indicated in a listing of current major clients.
  - k. Independence from financial functions such as municipal bond underwriting or trading or other activities and the absence of other clients which could result in a conflict of interest.
  - l. Reputation for integrity and compliance with law.
  - m. Commitment to fair and equitable employment practices.
- This rule is intended to implement Iowa Code section 262.9(17).

**681—8.9(68B,262) Prohibited interest in public contracts.**

**8.9(1) Board policy.** It is the policy of the board of regents that no employee of a regent institution, employee of the regent board office, or member of the board, shall sell, either directly or indirectly, any goods or services to any regent institution or board office, except under the following conditions:

- a. The board of regents must give its consent. The individual who wishes to sell goods or services must not participate in giving that consent. Further, the individual will be precluded from participating not only in the initial decision to purchase and to authorize, but also in all subsequent approvals which might include payment vouchers, contract amendments, or any substantive changes to such agreements.
- b. The responsibilities of the individual who wishes to sell goods or services must be such that they are not related to the regulatory authority of the board over the institution or the board office. Moreover, the selling of goods or the providing of services by the individual must not affect the individual's responsibilities at the board. As such, review and approval authorizations must exist that will screen out potential conflicts of interest that could unduly influence decisions based upon providing such goods or services.

- c. An individual who sells goods or provides services to board institutions or the board office cannot include, as part of that exchange, the requirement that the individual serve as an advocate for the institution or office to the board.

- d. The selling of goods or the providing of services to a board institution or board office cannot be an indirect means of selling goods or providing services to the board.

**8.9(2) When authorization is required.** Each regent institution or the board office shall not purchase in any one occurrence any goods or services having a value in excess of \$2,000 from a regent institution employee, a regent board office employee, or a member of the board unless the sale is made after public notice and competitive bidding. Prior authorization can be given on a per occurrence basis or on the basis of approval by the regents of a list of individuals. Once approved by the board, an individual will remain on the approved master list maintained by the institution or office transacting business with the individual. The master list will be reviewed periodically as part of the institution's normal review process.

**8.9(3) Authorization process.** Such requests for authorizations shall be in writing and signed by the employee or board member requesting consent and shall include the individual's name, the individual's job responsibilities, the name of the individual's firm, if applicable, a listing of goods or services to be supplied, a supporting narrative comment as to the rationale for doing business with the individual and an explanation of why the sale will not create a conflict of interest or provide financial gain by virtue of one's position within the agency.

**8.9(4) Emergency purchases.** Purchases from such individuals that are critical to sustaining patient care or human life, maintaining critical research equipment, or similar instances, must be approved by the vice president for business and finance, superintendent, or equivalent title, or their designees, with subsequent approval by the board of regents at the next scheduled meeting.

**8.9(5) Reporting.** Regent institutions and the board office shall include with their annual purchasing report to the board a summary of the preceding fiscal year's purchases from individuals approved per subrule 8.9(2). The report will contain a narrative, where appropriate, relative to changes from the prior fiscal year in scope of services or goods provided, including, for example, assumption of additional product lines, expanded service capabilities and any other pertinent information that may have an effect upon increased volume for a particular individual or firm.

**8.9(6) Competitive bidding.** All purchases of goods or services by regent institutions, the board office, or the board also must comply with applicable bidding requirements.

**8.9(7) Effect of other laws.** Neither these rules nor any consent provided under them constitutes consent for any activity which would constitute a conflict of interest at common law or which violates any applicable statute or rule. Notwithstanding board consent under these rules, it is the responsibility of the individual selling the goods or services to ensure compliance with all applicable laws and to avoid both impropriety and the appearance of impropriety.

**8.9(8) Definition.** For purposes of these rules, the definition of employee shall be as follows: "Employee" shall mean a paid employee of the state of Iowa, the employee's spouse or minor children, and any firm of which any of those persons is partner or sole proprietor, as well as any corporation of which any of those persons hold 5 percent or more stock either directly or indirectly.

This rule is intended to implement Iowa Code section 68B.4.

These rules are intended to implement Iowa Code sections 68B.3, 68B.4, chapter 262, and Attorney General Opinion 92-12-2.

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